

IN RE: PETITION FOR SPECIAL HEARING  
N/S Russell Avenue at E/S  
Russell Court  
(2012 Russell Avenue)  
2nd Election District  
2nd Councilmanic District  
Lowrie B. Sargent and  
Stephen C. Smith -  
Petitioners

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 92-221-SPH

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of the subject property as a twelve unit apartment building in accordance with Petitioner's Exhibit 1.

The Petitioners, by Lowrie B. Sargent, appeared and testified. There were no Protestants.

Testimony indicated that the subject property, known as 2012 Russell Avenue, consists of 0.544 acres more or less, zoned D.R. 5.5 and is improved with a 3.5 story masonry dwelling containing twelve apartments. Lowrie Sargent testified that he and Stephen Smith, trading as L & S Management, have owned the subject property since 1984 and are in the process of selling it. Testimony indicated that in order to secure its sale as a twelve-unit apartment building, Petitioners must provide written verification from Baltimore County that the property is zoned properly for such use. Prior to obtaining such written verification, Petitioners must prove that the property has been used continuously and without interruption as a twelve unit apartment building since prior to the effective date of the zoning regulations and thus enjoys a legal nonconforming use inasmuch as the property does not meet current zoning requirements. In support of their request, Mr. Sargent submitted the signed affidavits of Helen C. Putnam, Ruth H. Rixham, and S. Ward Tiernan which indicate that the proper-

ly has been used continuously and without interruption as a twelve unit apartment building since as early as 1938. Evidence submitted indicated that Ms. Putnam's uncle, Walter Crismer, actually constructed the building in 1924 and converted it to twelve apartments in 1938. The testimony and evidence presented indicate that the relief requested is within the spirit and intent of the B.C.Z.R. and will not result in any detriment to the health, safety or general welfare of the surrounding community.

As with all nonconforming use cases, the first task is to determine what lawful nonconforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A2d. 36 (1978).

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

"(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

- 2 -

(b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original non-conforming use."

McKemy v. Baltimore County, Md., Supra.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. It is clear from the testimony that the subject property has been used continuously and without interruption as a twelve unit apartment building since prior to the effective date of the zoning regulations and as such, enjoys a legal nonconforming use. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 9th day of January, 1992 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a twelve-unit apartment building, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED.

TMK:bjs

Very truly yours,  
TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning

Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

January 9, 1992

Mr. Lowrie B. Sargent  
13243 Westmeath Lane  
Clarksville, Maryland 21029

RE: PETITION FOR SPECIAL HEARING  
N/S Russell Avenue at E/S of Russell Court  
(2012 Russell Avenue)  
2nd Election District - 2nd Councilmanic District  
Lowrie B. Sargent and Stephen C. Smith - Petitioners  
Case No. 92-221-SPH

Dear Mr. Sargent:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs

cc: People's Counsel

File

ORDER RECEIVED FOR FILING  
Date 1/9/92  
By [Signature]

ORDER RECEIVED FOR FILING  
Date 1/9/92  
By [Signature]

ORDER RECEIVED FOR FILING  
Date 1/9/92  
By [Signature]

## Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve -----  
the non-conforming use of 2012 Russell Avenue as  
a twelve-unit apartment building

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:  
(Type or Print Name)  
Signature  
Address  
City and State

Legal Owner(s):  
(Type or Print Name)  
Signature  
(Type or Print Name)  
Signature  
Address  
City and State

Attorney for Petitioner:  
(Type or Print Name)  
Signature  
Address  
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted  
Name: Lowrie B. Sargent 1/2 L & S Management  
Address: 3776 Plum Hill Ct.  
City and State: Baltimore City, MD 21208 Phone No.: (410) 884-0938

Attorney's Telephone No.: -----

#### ZONING DESCRIPTION

Beginning at a point on the Northerly side of Russell Avenue (40 feet wide) at its intersection with the East side of Russell Court (22 feet wide), thence running the following courses and distances:  
1) South 57° 58' West 142.59 feet  
2) North 62° 10' West 93.56 feet  
3) 64.52 feet by a curve to the right having a radius of 31.5 feet and a chord bearing North 03° 18' East 53.92 feet  
4) North 55° 35' East 122.93 feet  
5) North 34° 23' West 20.3 feet  
6) North 55° 35' East 41.6 feet  
7) South 32° 02' East 155.23 feet to the point of beginning, as recorded in deed Liber ENK Jr No. 6701 folio 458.

Being the parcel shown as "Crismer Apartments" in the subdivision of "Russell Terrace" as recorded in Plat Book No. 12 folio 27.

Containing 0.544 acres of land, more or less.

Also known as 2012 Russell Avenue in the 2nd Election District.



#### CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 2nd Date of Posting: November 25, 1991  
Posted for: Special Hearing  
Petitioner: Lowrie B. Sargent and Stephen C. Smith  
Location of property: N/S Russell Avenue at corner of Russell Court 2012 Russell Avenue  
Location of Sign: Front of 2012 Russell Avenue  
Remarks: -----  
Posted by: S. J. Crater Date of return: December 3, 1991  
Number of Signs: 1

#### CERTIFICATE OF PUBLICATION

TOWSON, MD., Nov. 29, 1991  
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Nov. 28, 1991.

THE JEFFERSONIAN,

Publisher

#### CERTIFICATE OF PUBLICATION

TOWSON, MD., Nov. 29, 1991

THIS IS TO CERTIFY, that the annexed advertisement was published in OWINGS MILLS TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Nov. 28, 1991.

OWINGS MILLS TIMES,

S. Zeke Orlin  
Publisher

NOTICE OF HEARING  
The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the proposed Special Hearing, Case No. 92-221-SPH, at the County Office Building, 400 Washington Avenue, Towson, Maryland 21204, on Monday, December 2, 1991, at 6:00 p.m.  
Special Hearing to approve the nonconforming use of a twelve-unit apartment building on N/S Russell Avenue at E/S of Russell Court, Baltimore County, Maryland.  
LAWRENCE E. SCHMIDT  
Zoning Commissioner of Baltimore County  
CITY 11026 November 28

ORDER RECEIVED FOR FILING

Date 1/9/92  
By [Signature]



ESTIMATED LENGTH OF HEARING - 1/2HR. - 1HR.  
AVAILABLE FOR HEARING  
MON./TUES./WED. - NEXT TWO MONTHS  
ALL OTHER DATE  
REVIEWED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

296  
\$ 66.34  
25  
91.34

**Baltimore County**  
Zoning Commissioner  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

Account: R-001-6150  
Number

Date

111 West Chesapeake Avenue  
Towson, MD 21204

887-3353

NOVEMBER 20, 1991

RE: Item No. 232, Case No. 92-221-SPH  
Petitioner: Lowrie B. Sargent, et al  
Petition for Special Hearing

Dear Mr. Sargent:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

Public Hearing Fees

QTY	PRICE
040 - SPECIAL HEARING (OTHER)	1 X \$175.00
TOTAL: \$175.00	

LAST NAME OF OWNER: SARGENT, SMITH

Please Make Checks Payable To: Baltimore County \$175.00  
BA 0002133PM11-13-91

Cashier Validation

**Baltimore County**  
Zoning Commissioner  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

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Number

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Please Make Checks Payable To: Baltimore County

Cashier Validation

**Baltimore County Government**  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning

111 West Chesapeake Avenue  
Towson, MD 21204

887-3353

NOVEMBER 20, 1991

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 92-221-SPH  
N/S Russell Avenue at corner of Russell, E/S Russell Court  
2012 Russell Avenue  
2nd Election District - 2nd Councilmanic  
Petitioner(s): Lowrie B. Sargent and Stephen C. Smith

Dear Petitioner(s):

Please be advised that \$\_\_\_\_\_ is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE SIGNING SIGN & POST SIGN(S) MUST BE RETURNED ON THE DAY OF THE HEARING OR THE OFFICE SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SIGN(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 118, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your order, immediate attention to this matter is suggested.

ARNOLD JABLON  
DIRECTOR

**Baltimore County Government**  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning

111 West Chesapeake Avenue  
Towson, MD 21204

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Zoning Commissioner  
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111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

Account: R-001-6150  
Number

Date

111 West Chesapeake Avenue  
Towson, MD 21204

887-3353

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Please Make Checks Payable To: Baltimore County

Cashier Validation

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Office of Zoning Administration  
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Office of Planning & Zoning

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ARNOLD JABLON  
DIRECTOR

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Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning

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Towson, MD 21204

887-3353

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ARNOLD JABLON  
DIRECTOR

**Baltimore County Government**  
Fire Department

700 East Joppa Road, Suite 901  
Towson, MD 21204-5500

887-3353

NOVEMBER 25, 1991

RE: Property Owner: LOWRIE B. SARGENT AND STEPHEN C. SMITH  
Location: #2012 RUSSELL AVENUE  
Item No.: 232 Zoning Agenda: NOVEMBER 26, 1991

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: [Signature] Noted and Approved [Signature]  
Planning Group Fire Prevention Bureau  
Special Inspection Division

JP/KEK



The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future.

Wald Tiernan      J. WARD TIERNAN  
Affiant (Handwritten Signature)      Affiant (Printed Name)

Based upon your personal knowledge, please answer the following questions in the space provided:

1. Can you verify by this affidavit, and/or testify in court if necessary, that the property located at 2012 Russell Avenue has been occupied as a \_\_\_\_\_ (# of units) apartment dwelling since \_\_\_\_\_ (month) \_\_\_\_\_ (year). yes (yes or no)
2. Can you also verify and testify, if necessary, that said apartments have been occupied by tenants every year since \_\_\_\_\_ (month) \_\_\_\_\_ (year).
3. no Will you realize any gain from the sale of this property? (yes or no).

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 29 day of September, 1961, before me, a Notary Public of the State of Maryland, and in the County of Baltimore, personally appeared S. Ward Tice Nth, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal John J. Lamy  
 John J. Lamy 8-1-95

PETITIONER'S  
4

## September 12, 1991

To Whom It May Concern,

On September 10, 1974 Victor McFarland and myself (acting as general partners for Pyramid Ventures) purchased the property located at 2012 Russell Avenue in Woodlawn, Maryland from Mrs. Sylvia Green.

At the time of purchase this property consisted of 12 apartment units. Mrs Green had inherited the property from her husband. I was told that they had purchased the property sometime in 1969 from a Walter Crisner who had owned it since 1938. Mr. Crisner was a developer who, upon purchasing the building, converted it to apartments and managed it as 12 units for a long period of time prior to selling it to the Greens.

We sold this property in April of 1984. At the time it was conveyed it was still maintained as a 12 apartment unit.

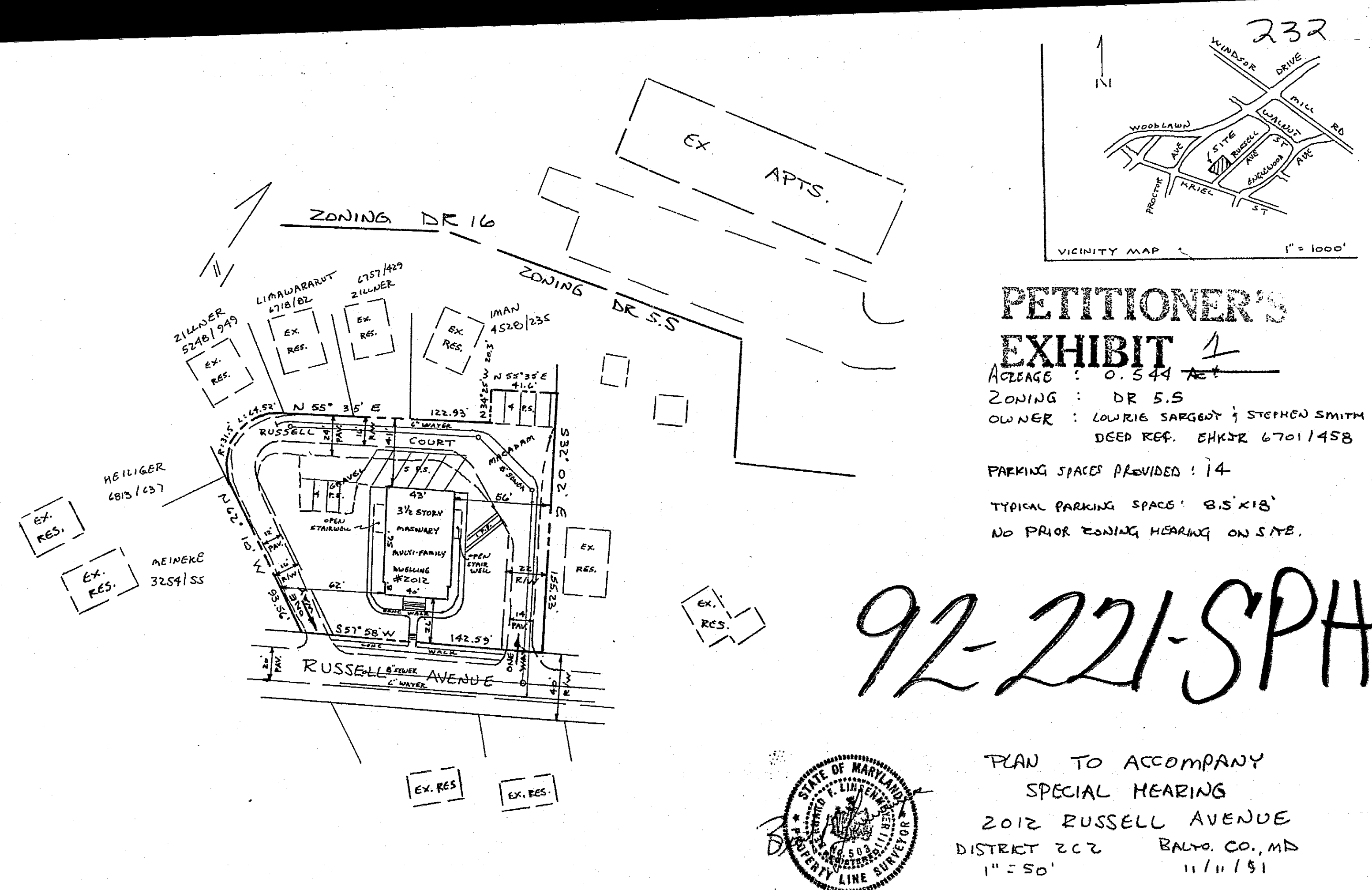
Sincerely,

Marvin A. Mathis

HAM/ek

PETITIONER'S  
EXHIBIT 5

8651 Baltimore National Pike, Ellicott City, MD 21043 • (301) 750-2600



92-221-SPH

PLAN TO ACCOMPANY  
SPECIAL HEARING  
2012 RUSSELL AVENUE  
DISTRICT 2C2 BALTO. CO., MD  
1" = 50' 11/11/91

